

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/11/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-018634

FILED: _____

HAZELTREE APARTMENTS-PHOENIX HAZEL SCOTT M CLARK
TREE

v.

JOHN BUMPHUS

JOHN BUMPHUS
2822 E OSBORN #233
PHOENIX AZ 85016-0000

PHX JUSTICE CT-E2
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal from a Forcible Detainer/Special Detainer Judgment pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument and the Court has considered and reviewed the record of the proceedings from the East Phoenix #2 Justice Court, the exhibits made of record, and the Memoranda submitted by the parties.

The Court has received several pleadings by Appellant. The first which is entitled "Defendant's Amended and Supplemental Counterclaim" appears to be a counterclaim on an appeal.

IT IS ORDERED denying the relief requested and striking this pleading as inappropriate in a Civil appeal on the record.

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Appellant has also filed a request for identification and production of documents. This is a Civil appeal on the record and discovery is inappropriate for these proceedings.

IT IS ORDERED denying the relief requested and striking Appellant's Request for Identification and Production of Documents.

Finally, Appellant has filed a Motion or Application for a Preliminary Injunction. Appellant's application contains no verification and appears to be inappropriate in the context of this appeal.

IT IS ORDERED denying Appellant's Motion for Preliminary Injunction as inappropriate in this case.

Turning to the merits of this appeal, Appellee, Hazeltree Apartments filed a complaint for Forcible/Special Detainer requesting immediate possession of the premises and a judgment for non-payment of rent by Appellant. Appellant denied this complaint and counterclaimed. After a trial the trial judge granted judgment to Appellee on October 3, 2001. The judgment included immediate possession of the premises, rent of \$1,063.96, late charges of \$165.00, attorneys fees of \$75.00, and costs of \$46.00. The total judgment amount was \$1,184.96. The trial court dismissed Appellant's counterclaim.

Appellant challenges the sufficiency of the evidence to support the judgment. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

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will be resolved against the Appellant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Appellant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination to dismiss Appellant's counterclaim was not clearly erroneous and was supported by the record.

IT IS ORDERED affirming the judgment of October 3, 2001.

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.

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IT IS FURTHER ORDERED remanding this matter back to the East Phoenix #2 Justice Court for all further and future proceedings in this case with the exception of attorneys' fees and costs on appeal.

IT IS FURTHER ORDERED directing counsel for Appellee to file an Application and Affidavit for Attorneys' Fees and Costs on appeal on or before April 10, 2001, with this court.